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THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Ambassador Window Cleaning & Maintenance

Case No.: 2017-156

Posting Date: July 7, 2017

Contracting Entity: Trident Technical College

Solicitation No.: 041317-910-40206-06/23/17

Description: Annual Window Cleaning For TTC

DIGEST

Protest requesting waiver of bidder's failure to claim procurement preferences is denied. Ambassador Window Cleaning & Maintenance's (AWC) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on a review of procurement documents and applicable law and precedents.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	05/05/2017
Amendment One Issued	05/18/2017
Intent to Award Issued	06/12/2017
Protest Received	06/19/2017

ANALYSIS

This Invitation for Bids was issued by Trident Technical College (TTC) to acquire to clean the interior and exterior surfaces of all exterior windows and glass at 4 campuses and 2 sites in the Tri-county area of coastal SC on an annual basis. The solicitation provided offerors the opportunity to request the Resident Contractor and Subcontractor preferences authorized by Section 11-35-1524. Four responsive bids were received. AWC offered the lowest bid at \$19,060 but did not request any of the preferences. SW Cleaning offered the second lowest bid at \$19,296 and requested the 7% Resident Contractor preference. Once the preference was applied, SW Cleaning had the lowest evaluated bid at \$17,945. An Intent to Award was posted to SW Cleaning of Myrtle Beach, SC on June 22, 2017 and indicated that the SC Resident Contractor preference was applied to the award.

AWC protests that it is located in Charleston, SC, and qualifies for the resident contractor preference. However, AWC acknowledges it failed to claim the preference and requests that its bid be re-evaluated with the preference applied.

Section 11-35-1524(E)(4) states:

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210.

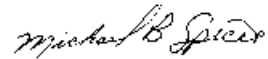
(emphasis added)

The Code requires the agency to give potential bidders the opportunity to apply for applicable preferences and prohibits the awarding of a preference to any bidder that did not apply for the preference. AWC did not apply for the preference and cannot receive the benefit of the preference.

DECISION

For the reasons stated above, the protest of Ambassador Window Cleaning & Maintenance is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Byron Briney](#)
To: [Protest-MMO](#)
Subject: Solicitation 041317-910-40206-06/23/17 Annual Window Cleaning For TTC
Date: Monday, June 19, 2017 11:26:40 AM

We would like to protest the intent to award on this solicitation.

We have been doing work at these locations for many years. Upon investigation it was found that we did not check the box that has to do with being a local company. The potentially awarded contractor did and this is what resulted in us not getting the contract. Not only are we located in South Carolina we are also located right here in Charleston and the other contractor will need to travel from Myrtle Beach. It was also explained that the potentially awarded contractors bid is more than ours. I understand the need to follow rules however this is a very small and easy mistake to make. Paperwork with detail like this is not the easiest thing to navigate as I'm sure you understand.

As I mentioned, we have been doing work for these locations for many years now, have a great relationship with the staff and know the complexities of each property as it pertains to our scope of work. I would really appreciate our bid being reconsidered since we are a local company and our bid is less. Please do not hesitate to contact me with any questions or comments.

Thank you,
Byron Briney
President
843-766-6890
[Ambassador Window Cleaning & Maintenance](#)

Services We Offer:
Window Cleaning
Pressure Washing
Gutter Cleaning
Awning Cleaning
Roof/Shingle Cleaning
Building Restoration
 Glass restoration
 Waterproofing
 Caulking

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2016 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 473, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.